

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA OFFICE OF HIGHER EDUCATION

In the Matter of the Wealth Intelligence
Academy, Inc.

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION**

This matter came on for hearing before Administrative Law Judge Kathleen D. Sheehy on September 17-18, 2008, at the Office of Administrative Hearings, 600 North Robert Street, St. Paul, Minnesota.

James P. Barone, Assistant Attorney General, 445 Minnesota Street, Suite 1200, St. Paul, Minnesota 55101-2130, appeared for the Minnesota Office of Higher Education (OHE).

Mitchell L. Lathrop, Esq., Duane Morris LLP, 101 West Broadway, Suite 900, San Diego, CA 92101; and John J. McDonald, Jr., Meagher & Geer, 33 South Sixth Street, Suite 440, Minneapolis, MN 55402, appeared for the Wealth Intelligence Academy, Inc. (Respondent).

STATEMENT OF ISSUES

1. In March 2007, was the Respondent a school that was subject to licensure under the Private School Career Act, Minn. Stat. § 141.25, subd. 1 (2006), or to registration pursuant to Minn. Stat. §§ 136A.61-.71 (2006)?

2. At the present time, is the Respondent a school that is subject to licensure under Minn. Stat. § 141.25, subd. 1 (2006), as amended by 2007 Minn. Laws ch. 144, art. 3, §§ 16-17 & 30, and 2008 Minn. Laws, ch. 298 § 24; or to registration pursuant to Minn. Stat. §§ 136A.61-.71 (2006), as amended by 2007 Minn. Laws ch. 144, art. 3 § 3?

3. Is the Respondent exempt from licensure pursuant to Minn. Stat. § 141.35(9) and (15) (2006) because it is engaged exclusively in the teaching of purely avocational subjects or because its courses provide instruction in personal development?

4. If the Respondent was operating without a required license in March 2007, is disciplinary action, such as requiring a refund of tuition paid by a Minnesota resident or imposition of an administrative penalty, appropriate?

The Administrative Law Judge concludes that the Respondent is not exempt from licensure and has been subject to licensure since 2007. Because the Respondent was operating without a license in Minnesota in 2007, disciplinary action is appropriate.

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. The Whitney Information Network is a publicly owned corporation that is the parent of the Whitney Education Group and the Wealth Intelligence Academy. The companies are located at 1612 Cape Coral Parkway in Cape Coral, Florida.¹

2. The Whitney Education Group, a company with about 400 employees, does the sales and marketing work for the Whitney Information Network. Whitney Education Group puts on free real estate seminars across the country, at which those persons who attend are encouraged to pay for and attend additional three-day training seminars. At the three-day seminars, attendees are encouraged in turn to purchase additional training courses provided by the Wealth Intelligence Academy.² The Wealth Intelligence Academy has no employees; Whitney Education Group does its marketing and sales, and it uses independent contractors to provide any classroom instruction.³ The Wealth Intelligence Academy does not issue degrees, transcripts, or grades to students who register for its courses.⁴

3. Anita Moore is a resident of St. Cloud, Minnesota. Moore has been unemployed for the past five years and provides care for a disabled adult child. In February 2007, Moore received in the mail a flyer announcing a free one-day "Building Wealth Training" seminar on February 22, 2007, at the Earle Brown Conference Center in Brooklyn Center, Minnesota.⁵ The flyer is written as a letter from Russ Whitney, a self-described real estate multi-millionaire, to the recipient, encouraging the recipient to attend the seminar, at which Whitney's "wealth team will introduce you to the tools you need to go out and start building personal wealth through real estate." The flyer further provides "We'll show you how to generate multiple sources of income and why creating \$5,000 A MONTH IN EXTRA INCOME ought to be your first goal."⁶

¹ Tr. at 220, 236-37.

² Tr. 220, 236.

³ Tr. at 236-37.

⁴ Tr. at 220-21, 224-25.

⁵ Exhibits 12, 17, 18 and 19 are all flyers received by Moore concerning free one-day seminars in the Minneapolis area between February and May 2007. Moore did not keep the first flyer she received, but she received several more after attending the free seminar. See Tr. at 163-70.

⁶ Ex. 12. See also Ex. 17 ("At your FREE Training, we'll show you how real estate could be your ticket to financial freedom – whether you're looking for a new career, a way to make extra income

4. Moore attended the February 22, 2007, seminar at the Earle Brown Conference Center. There was one speaker at the seminar, who presented a slide show depicting examples of people making money by “flipping” houses or buying homes in foreclosure and renting them back to the former owners. Moore was given a free “Entrepreneur Start-Up Kit,” a two-disc CD “jam-packed with business-building information specifically designed to power-start your drive to personal financial independence.”⁷

5. Representatives of the Whitney Education Group were present at the seminar and encouraged attendees to register for an additional three-day Real Estate Training Academy. Moore registered for a three-day Training Academy scheduled to take place at the Millennium Hotel in Minneapolis on March 16-18, 2007. She charged the \$995 tuition on a credit card.⁸

6. The contract Moore signed to register for the three-day seminar is captioned “Student Agreement” and contains the following “Disclosure and Acknowledgment:”

This is a legally binding Agreement . . . between Whitney Education Group, Inc., its parent, subsidiary, and affiliates (hereinafter referred to as the “Company”) and the undersigned (hereinafter referred to as the “Student”). The undersigned has read the entire Agreement (front and back) and agrees to all the terms and conditions of this Agreement. The Student understands that he/she may cancel this Agreement at any time prior to midnight of the third (3) business day after the date of this Agreement, and acknowledges that they have received the attached Notice of Cancellation. By signing this Agreement, the student acknowledges receipt of the course catalog and a copy of this Agreement.⁹

7. On February 22, 2007, Moore also signed an “Equipment/Software & Services Finance Lease” for the purpose of financing a “Merchant Master Pro” account. The merchant account would enable Moore to accept credit card payments from any future renters of property she might purchase. She and other attendees were encouraged to write into rental agreements a provision that rent could be automatically debited on the renter’s credit cards.¹⁰ The lease is between a company called E-Commerce Exchange, Inc., and Moore; in it, Moore agreed to have her bank account automatically

while you keep your day job, or a way to build your nest egg for retirement”); Ex. 18 (What do you have to lose? This training is absolutely FREE! And it could open the door for you to build a better life for you and your family. Come see for yourself why today’s ‘buyer’s market’ could be YOUR wealth-building opportunity”).

⁷ Ex. 9.

⁸ Tr. at 113-19.

⁹ Ex. 21. The Notice of Cancellation form is Ex. 22.

¹⁰ Tr. at 175-78.

debited for 30 monthly payments of \$39.95. By its terms the lease cannot be canceled.¹¹ The Respondent maintains there is no financial relationship between it and E-Commerce Exchange, Inc., but that it partners with this company at preview events and gives E-Commerce Exchange the opportunity to speak to the Respondent's students.¹²

8. Moore attended the three-day Training Academy seminar at the Millennium Hotel in Minneapolis on March 16-18, 2007. The speaker was Robert Venter. At the outset, attendees were advised not to discuss what they would learn in the training with family, friends, or other students, in order to avoid the negativism of other people. They were also told not to network with other students or to exchange names or business cards.¹³ Venter made repeated references to earning income from real estate. He advised people to keep their day jobs until they got enough training to produce an income; he also gave an example of an engineer who quit his job immediately to jump right into making money through real estate.¹⁴

9. On the first day, each student at the seminar was given a course catalog for the Advanced and Master Trainings offered by the Wealth Intelligence Academy.¹⁵ These materials identify Kevin N. Shriner, M.Ed, as Director of the Wealth Intelligence Academy. The "Advanced Training" courses are identified as MU110, Millionaire U™ Real Estate Training; RE120, Wholesale Buying; RE130, Foreclosure Training; RE140, Lease Option; RE 150, Property Management & Cash Flow; RE 250, Keys to Creative Real Estate Financing; RE 300, Asset Protection & Tax Relief; RE 510, Discount Notes & Mortgages; RE 520, Manufactured/Mobile Homes & RV Parks; RE 530, Rehabbing For Profit; RE 540, Tax Liens & Deeds; RE 550, Commercial Real Estate Investing; and RE350, Mentor Field Training. The "Master Training" courses focus on domestic and international land investment and development.¹⁶ Most of the courses, each of which appears to be three days in length, include "Graduation" at the end of the third day.¹⁷

10. The Wealth Intelligence course catalog contains the following statements:

At the Wealth Intelligence Academy®, you will find not only excellence in education; you will also find career guidance and

¹¹ Ex. 23.

¹² Tr. at 227.

¹³ Tr. at 137, 194.

¹⁴ Tr. 120-22.

¹⁵ Ex. 16; Tr. at 166-69, 233-34.

¹⁶ *Id.*, Table of Contents.

¹⁷ *Id.* at 3, 5, 7, 9, 11, 13, 17, 19, 21, 23, 25, 27.

counseling that can help you achieve your full potential in your personal as well as your professional life.¹⁸

This intensified real estate training is a truly hands-on and dynamic training program to put you on the fast track to success. . . . All of these techniques are designed to help you take the next step towards your real estate investing career. At Wealth Intelligence Academy®, you will learn the essentials of creating your own wealth, as well as how to achieve your own success in both real estate and/or in your chosen business.¹⁹

You will learn everything you need to know to begin a career in real estate investing.²⁰

Learn how to take the skills and talents that you already have and apply them to an industry that is willing to pay you well for your time and effort.²¹

Our Manufactured/Mobile Homes & RV Parks training is designed to expand your base of knowledge as a real estate pro – or to start you off in an exciting and new wealth-building career.²²

If you're ready to take your investment career to the next level, this Master Training will completely prepare you for "the highest and best use" of your investing skills.²³

The Mentor Program can provide unlimited opportunity for students who are serious about their real estate investment careers.²⁴

11. On the second day of the seminar, the speaker focused on how to build credit for the purpose of making investments. Attendees were given advice on how to call credit card companies and apply for cards or ask for increases in their credit limits. The speaker advised those without credit cards to apply for cards with American Express and Bank of America, because these were the easiest credit cards to obtain. He passed around two American Express Gold Cards obtained in the name of his dogs, Sable Venter and Fifi Venter. The attendees were given a homework assignment to call their credit card companies that night and attempt to obtain increases in their credit limits.²⁵ Moore called

¹⁸ *Id.* at "Welcome" page.

¹⁹ *Id.* at 2.

²⁰ *Id.* at 10.

²¹ *Id.* at 16.

²² Ex. 16 at 18.

²³ *Id.* at 26.

²⁴ *Id.* at 30.

²⁵ Tr. at 123-24; 139-40.

American Express that night and attempted to obtain an increase of her credit limit from \$14,000 to \$20,000 or \$30,000.²⁶

12. On the third day of the seminar, the speaker focused on the purchase of additional training from the Wealth Intelligence Academy. Students were given a price list for packages of courses.²⁷ Students were advised that 92% of people who purchased training at the “Platinum” Level were highly successful. Before lunch, students were told to go to the back of the seminar room to determine which package they should purchase. At the back of the room, tables were set up with credit card terminals, telephones to use for calling credit card companies, and brochures and additional materials for the Wealth Intelligence Academy. A large banner with the “Wealth Intelligence Academy” logo was displayed.²⁸

13. Moore signed up for training at the “Academy Elite” level. She paid the \$32,084.25 price by a convenience check for \$9,000.41 drawn on a credit union credit card; \$9,083.84 charged to a VISA card; and \$14,000 charged to her American Express card.²⁹ The check was made payable to “W.I.A.”; receipts for the credit card payments indicate payment was received by the Whitney Education Group.³⁰

14. The contract Moore signed to register for the Academy Elite training is captioned “Advanced Training Student Agreement” and contains the following “Disclosure and Acknowledgment:”

This is a legally binding Agreement . . . between Wealth Intelligence Academy, Inc., its parent, subsidiary, and affiliates (hereinafter referred to as the “Company”) and the undersigned (hereinafter referred to as the “Student”). The undersigned has read the entire Agreement (front and back) and agrees to all the terms and conditions of this Agreement. The Student understands that he/she may cancel this Agreement at any time prior to midnight of the third (3) business day after the date of this Agreement, and acknowledges that they have received the attached Notice of Cancellation. By signing this Agreement, the student acknowledges receipt of the course catalog and a copy of this Agreement.³¹

15. Moore also registered to attend a Wealth Intelligence Academy “Superconference” in Las Vegas. She charged the \$1,495 purchase price to her

²⁶ Tr. at 149-50.

²⁷ Ex. 26. The “On-Site” price was available if students purchased the training that day; the “Full” price was what they would pay if they waited until after the seminar was over. See Tr. at 128-30.

²⁸ Tr. at 124-36.

²⁹ Ex. 24; Ex. 27.

³⁰ Ex. 27.

³¹ Ex. 21. The Notice of Cancellation form is Ex. 22.

Visa card. The receipt indicates that payment was received by the Whitney Education Group.³²

16. Moore did not attempt to cancel the above agreement within the three-day cancellation period. A short time after the three-day period had passed, she received a letter from American Express increasing her credit limit to \$20,100 but denying the full increase she had requested, in part, because of “[o]ur credit experience with customers who have made purchases at establishments where you have recently used your card.”³³

17. Moore became concerned when she saw this reason for denial of further credit. She attempted to call and email the Wealth Intelligence Academy Division of Student Services, but was not able to obtain a response other than a voicemail prompt.³⁴ She then contacted the OHE to determine how to file a complaint.

18. On April 5, 2007, the OHE wrote to the Respondent seeking information necessary to determine whether it was required to be licensed or registered in Minnesota.³⁵

19. On April 12, 2007, Moore wrote to the Respondent seeking a refund of the amounts paid at the three-day seminar in Minneapolis.³⁶

20. By letter dated April 23, 2007, the Respondent replied to the OHE, asserting that although it did fall within the definition of a school as defined in Minn. Stat. § 136A.62, because it owned and operated a private postsecondary educational institution and used the term “academy” in its name, it was not required to register in Minnesota because the Wealth Intelligence Academy [apparently as opposed to the Whitney Education Group] did not provide courses in Minnesota. It also maintained it was not subject to licensure based on the statutory exemption for schools engaged exclusively in the teaching of purely avocational, recreational, or remedial subjects.³⁷

21. By letter dated May 10, 2007, the OHE advised the Respondent that it was not entitled to the exemption for teaching avocational subjects; that it did offer courses in Minnesota on February 22, 2007, and March 16-18, 2007, and that these courses were sufficient to require licensure; and that until the Respondent became licensed in Minnesota it should not maintain, advertise, solicit for, or conduct any further programs in Minnesota. It also notified the Respondent that violations were subject to fines of up to \$500 per day per

³² Ex. 25.

³³ Ex. 28.

³⁴ Tr. at 152-53. There is a telephone number on the Respondent’s materials that is identified both as the “Enrollment Department” (Ex. 10) and the “Division of Student Services” (Ex. 24, Terms and Conditions, Inquiry Procedures).

³⁵ Ex. 1.

³⁶ Ex. 29.

³⁷ Ex. 2.

violation and that all contracts with Moore were unenforceable and all amounts paid for additional training should be refunded immediately.³⁸

22. By letter dated May 23, 2007, the Respondent requested a contested case hearing.³⁹

23. In June 2007, the Respondent sent to Moore a set of DVDs called "Millionaire U in a Box." Its "Payment Policy" authorizes the Respondent to provide the training in this manner if the student fails to attend at least one of the training classes every 60 days.⁴⁰

24. By letter dated July 30, 2007, the OHE advised the Respondent of amendments to Minnesota Statutes chapter 141 that made the licensure requirement applicable to a school using the term "academy" in its name.⁴¹

25. On September 25, 2007, the Respondent offered Ms. Moore a partial refund of \$9,094.25.⁴² Moore declined to accept this offer.⁴³

26. By letter dated September 25, 2007, the Respondent reiterated its position that it was not required to be licensed. The Respondent maintained it qualified for licensure exemptions for avocational courses and courses providing instruction on personal development. The Respondent stated that "We would be required to make a full refund if the Wealth Intelligence Academy were required to be licensed. However, it is our contention that because of our avocational and personal development exempt status we are not required to be licensed under the previous or current statutes."⁴⁴

27. On June 20, 2008, the Office of Higher Education issued the Notice and Order for Hearing, Order for Prehearing Conference, and Statement of Charges in this matter.

³⁸ Ex. 3.

³⁹ Ex. 4.

⁴⁰ Ex. 24, Terms and Conditions. An advanced training class is defined as live classroom training, web-based Internet training, or computer-based training delivered on CD-ROM or DVD. The Payment Policy provides that if a student does not schedule and attend one course every 60 days, the Respondent will satisfy its obligation to provide training by shipping computer-based or DVD training materials to the student's last known address.

⁴¹ Ex. 15.

⁴² Ex. 29.

⁴³ Tr. at 161.

⁴⁴ Ex. 5.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Minnesota Office of Higher Education and the Administrative Law Judge have jurisdiction in this matter pursuant to Minn. Stat. §§ 14.50 and 141.29, subd. 2.

2. The Minnesota Office of Higher Education has given proper notice of the hearing in this matter and has fulfilled all relevant procedural requirements of law and rule.

3. The Private Career School Act, Minn. Stat. § 141.20-.35 (2006), provides that a school must not maintain, advertise, solicit for, administer, or conduct any program in Minnesota without first obtaining a license from the office.⁴⁵ In March 2007, “school” was defined as “any person, within or outside the state, who maintains, advertises, administers, or conducts any program for profit at any level other than baccalaureate or graduate programs, and is not specifically exempted by sections 141.21 to 141.35.”⁴⁶

4. In March 2007, Minn. Stat. § 141.35 (9) exempted from licensure “schools engaged exclusively in the teaching of purely avocational, recreational, or remedial subjects as determined by the office.”⁴⁷ A school that promises, makes reference to, or advertises preparation for gainful employment upon completion of one of its programs shall not be considered as engaged exclusively in the teaching of purely avocational or recreational subjects under Minn. Stat. § 141.35 and shall be subject to licensure.⁴⁸

5. In March 2007, Minn. Stat. § 141.35(16) exempted from licensure “classes, courses, or programs providing instruction in personal development, modeling, or acting.”

6. In March 2007, the Respondent was subject to licensure under Minn. Stat. § 141.20-.35. The Respondent was not exempt from licensure on the basis that it engaged exclusively in the teaching of purely avocational subjects or that its courses provided instruction in personal development.

7. At the present time, the Private Career School Act defines a school as:

any person, within or outside the state, who maintains, advertises, administers, solicits for, or conducts any program at less than an associate degree level and is not registered as a private institution

⁴⁵ Minn. Stat. § 141.25, subd. 1 (2006).

⁴⁶ Minn. Stat. § 141.21, subd. 5 (2006)

⁴⁷ Minn. Stat. § 141.35(9).

⁴⁸ Minn. R. 4880.2400 (2007).

under sections 136A.61 to 136A.71 and is not specifically exempted by section 141.35 or 141.37. School also means any person, within or outside the state, who maintains, advertises, administers, solicits for, or conducts any program at less than an associate degree level, is not registered as a private institution pursuant to sections 136A.61 to 136A.71, and uses the term, “college,” “institute,” “academy,” or “university” in its name.⁴⁹

8. At the present time, the Private Career School Act exempts from licensure “schools engaged exclusively in the teaching of purely avocational, recreational, or remedial subjects as determined by the office except schools required to obtain a private career school license due to the use of “academy,” “institute,” “college,” or “university” in their names.⁵⁰ It also exempts from licensure classes, courses, or programs providing instruction in personal development, modeling, or acting.⁵¹

9. At the present time, the Respondent is subject to licensure under Minn. Stat. § 141.20-.35 because it maintains, advertises, administers, solicits for, or conducts programs at less than an associate degree level, is not registered as a private institution pursuant to sections 136A.61 to 136A.71, and uses the term “academy” in its name. The Respondent is not exempt from licensure on the basis that it engages exclusively in the teaching of purely avocational subjects or that its courses provide instruction in personal development.

10. In March 2007, Minn. Stat. § 136A.63 required schools offering programs or courses within Minnesota to register annually with the office. “School” was defined, in relevant part, as an individual, partnership, company, firm, society, trust, association, corporation, or any combination thereof, which “is, owns, or operates a private, postsecondary education institution which uses the term “college,” “academy,” “institute,” or “university” in its name.⁵² A school that was subject to licensing under chapter 141 was exempt from the registration requirement.⁵³

11. In March 2007, and at the present time, the Respondent was and is subject to licensure under chapter 141; and accordingly was and is exempt from registration under Minn. Stat. § 136A.63.

12. A contract entered into with a person for a program by or on behalf of a person operating an unlicensed school is unenforceable in any action.⁵⁴ When a contract with a student is deemed unenforceable pursuant to Minn. Stat. § 141.25, subd. 2, a school must refund all tuition, fees, and other charges

⁴⁹ Minn. Stat. § 141.21, subd. 5.

⁵⁰ Minn. Stat. § 141.35 (9).

⁵¹ Id. § 141.35(15).

⁵² Minn. Stat. § 136A.62, subd. 3 (2006).

⁵³ Id., § 136A.653, subd. 1 (2006).

⁵⁴ Minn. Stat. § 141.25, subd. 2.

received from the student or prospective student within 30 days of written notification from the Minnesota Office of Higher Education.⁵⁵

13. The Minnesota Office of Higher Education may assess an entity that violates a provision of chapter 141 an administrative penalty in an amount not to exceed \$500 for each day for each violation.⁵⁶ The penalty for operating without a license is \$500 per day.

14. The Minnesota Office of Higher Education has the authority to require the Respondent to refund all amounts Moore paid to the Respondent in March 2007.

15. The Minnesota Office of Higher Education has the authority to fine the Respondent in the amount of \$500 per day for the days of March 16-18, 2007, for a total fine of \$1,500.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS RESPECTFULLY RECOMMENDED that the Minnesota Office of Higher Education take disciplinary action against the Wealth Intelligence Academy, Inc.

Dated: November 10, 2008

s/Kathleen D. Sheehy

KATHLEEN D. SHEEHY
Administrative Law Judge

Reported: Transcribed (two volumes).

NOTICE

This report is a recommendation, not a final decision. The Director of the Minnesota Office of Higher Education will make the final decision after a review of the record and may adopt, reject or modify these Findings of Fact, Conclusions, and Recommendation. Under Minn. Stat. § 14.61 (2006), the agency shall not make a final decision until this Report has been made available to the parties for at least ten days. The parties may file exceptions to this Report and the agency must consider the exceptions in making a final decision. Parties

⁵⁵ Minn. R. 4880.1600 (2005).

⁵⁶ Minn. Stat. § 141.32; Minn. R. 4880.2700, subp. 1.

should contact the agency at the address above to learn the procedure for filing exceptions or presenting argument.

If the agency fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. The record closes upon the filing of exceptions to the report and the presentation of argument to the agency, or upon the expiration of the deadline for doing so. The agency must notify the parties and the Administrative Law Judge of the date on which the record closes.

Pursuant to Minn. Stat. § 14.62, subd. 1 (2006), the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail.

MEMORANDUM

The Respondent has contended that the Wealth Intelligence Academy is not subject to licensure because it does not offer courses in Minnesota. This argument is factually unfounded. Although the Whitney Education Group sponsored the one-day “preview” seminar and the three-day “Real Estate Academy,” the Respondent’s contracts provide that the corporate parent, subsidiary, and affiliates collectively constitute the “Company” that offers the courses provided in Minnesota and elsewhere.⁵⁷ Consequently the Whitney Information Network, the Whitney Education Group, and the Wealth Intelligence Academy collectively operate the school that is subject to licensure in Minnesota.

In 2007, Minnesota law exempted from licensure “schools engaged exclusively in the teaching of purely avocational, recreational, or remedial subjects as determined by the office.”⁵⁸ The later amendments make this exemption inapplicable to a school that uses the term “academy” in its name. The Respondent agrees that it is not entitled to this exemption at the present time, but maintains that it was entitled to the exemption in 2007. Respondent also maintains that it has always been exempt, and continues to be exempt, under the exemption for courses that teach personal development. The Respondent contends its courses are aimed at improving the quality of life of its students by primarily by adding ancillary income and by teaching them to be successful investors in real estate, not as professionals, but as a hobby. The Respondent further contends that the avocational nature of its program is made clear by a disclaimer on its website. In 2008, the disclaimer on its website provided, in relevant part:

The courses and programs offered through Wealth Intelligence Academy® are not intended to qualify students for employment. Our curriculum is avocational in nature and is intended for the

⁵⁷ Ex. 21; Ex. 24.

⁵⁸ Minn. Stat. § 141.35(9).

personal enrichment, development and enjoyment of our students.⁵⁹

The OHE maintains that the avocational exemption is not applicable to schools that offer to train people to earn income, either through employment or self-employment. The OHE's rule regarding the avocational exception provides that a school that "promises, makes reference to, or advertises preparation for gainful employment upon completion of one of its programs shall not be considered as engaged exclusively in the teaching of purely avocational or recreational subjects under Minn. Stat. § 141.35 and shall be subject to licensure."⁶⁰

The dictionary defines "avocation" as an "activity taken up in addition to one's regular work or profession, usually for enjoyment; a hobby."⁶¹ A "vocation" is a regular occupation, especially one for which a person is particularly suited or qualified.⁶² By its express terms, the statutory exemption would apply to programs teaching something other than preparation for work, a profession, or a regular occupation. The OHE's rule is consistent with the ordinary meaning of the word, in that it makes clear the exemption is not applicable to programs that advertise "preparation for gainful employment." Contrary to the Respondent's argument, neither the statute nor the rule exempt programs preparing students for self-employment.

The Respondent's advertising and course materials focus on teaching students to produce monthly income through making investments in real estate. Students are informed in the classes that they can replace their income, or a significant portion of their income, by using the skills taught in the training.⁶³ Students are told to keep their day jobs only until they have had enough training to produce an income. All of the materials provided to students promote the training as a means to increase monthly income, build business, and either start or further develop careers in real estate. Respondent's sales and course material contradict its more recent claim that its courses seek to prepare hobbyists. Moreover, the disclaimer on the website does not appear anywhere in the flyers sent to potential students to encourage their attendance at the free preview seminar, or in the written materials provided at the free seminar or the three-day Training Academy. On the contrary, ALJ concludes that the website disclaimer is insufficient, in light of the record as a whole, to demonstrate the Respondent's entitlement to the exemption for avocational courses.

Based on this same evidence, the Administrative Law Judge concludes that the personal development exemption is unavailable to the Respondent. Courses that teach personal development, modeling, or acting are focused on

⁵⁹ Ex. 51.

⁶⁰ Minn. R. 4880.2400 (2007).

⁶¹ *American Heritage College Dictionary* (4th ed. 2002).

⁶² *Id.*

⁶³ Tr. at 235.

how an individual presents himself or herself to others. The OHE interprets the personal development exemption to cover, for example, classes in poise, posture, dressing for success, or public speaking, in addition to modeling or acting. The OHE properly determined that the personal development exemption is inapplicable to the Respondent.

K.D.S.